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BOOK REVIEWS

THE LAWS OF THE EARLIEST ENGLISH KINGS. Edited and translated by F. L. Attenborough, M.A. Cambridge: The University Press. 1922. pp. xii., 256.

The importance to legal and historical research of the various collections of laws issued by the Kings in England before the Norman Conquest can hardly be overrated. Written in the vernacular as they were, in marked contrast with the Latin of the laws of the Western Teutons on the Continent, they are, for that reason if for no other, an indispensable factor in investigating the legal system of any Teutonic nation, quite apart from their intrinsic value in the study of our own legal history. As the learned editor remarks, the laws of Æthelbert are the earliest document written in the English language, and "no other Teutonic language possesses any original records of equal antiquity, apart from short inscriptions." Then again, the Anglo-Saxon laws form an abundant stream of legislation, which flows for the five centuries prior to William the Conqueror, unmixed with Roman Law and merely tinged by Canon Law.

It is a remarkable thing to any one except an Englishman (who in this respect need be astonished at nothing) that we had to wait until 1840 for a complete edition of these laws with an English translation. Needless to say, there were a Latin edition, a French edition, and part of a German edition; but there was nothing so vulgar or useful as one in English until Benjamin Thorpe completed his for the Record Commission. This edition, like that of Schmid's in 1858, was superseded to a large extent, but by no means totally, by Liebermann's great work, *Die Gesetze der Angelsachsen*, the third and concluding volume of which appeared in 1916, and crowned one of the most notable pieces of legal and historical research in the twentieth century. Unfortunately, while there are but few well-equipped scholars who cannot understand German at all, there are many who cannot read it easily. And Mr. Attenborough has done a signal service in producing this edition of the earlier Anglo-Saxon laws together with an English translation and notes. He points out that a new English edition is needed both because many additions to our knowledge have been made since Thorpe's book was published, and also because that book has long been out of print and is not easily accessible to many who wish to use it. Mr. Attenborough's own edition is the first English one since the Record Commissioners', if we leave out of account M. H. Turk's *Legal Code of Alfred the Great*, which was published at Halle in 1893, and was limited to the Alfred-Ine code. He does not profess to cover all the ground quartered by Thorpe, for he does not go beyond the laws of Æthelstan; and he modestly disclaims any idea of competing with Liebermann. What he succeeds in doing is to put the inquirer in rapid possession of the exact meaning of any particular law (if it has an ascertainable meaning) and its general bearing, so as to start him on the road to the detailed interpretation supplied by Liebermann. Nor is the book a mere sign-post to the labours of others. The notes are critical as well as explanatory, and where the editor has been compelled to differ from Liebermann, he has stated the reason fairly, and the conclusion which he himself reaches frequently seems to be justified. As a sample, we may refer to his opinion that the East Anglian Kingdom had not come to an end at the time when the laws of Edward and Guthrum and what are supposed to be the later laws of

Edward were promulgated. It is something to have earned the right to appraise accurately the work of a great scholar, and it is still more creditable to exercise that right with restraint and judgment.

The notes are not elementary and they assume some familiarity with the outlines of Anglo-Saxon law and institutions in general. We hope that in the next edition Mr. Attenborough will expand some of them to the length of that on "ordeal," for the benefit of the general reader. Anglo-Saxon law is not so exclusively the property of the antiquarian as might be imagined. In March, 1922, a married couple stood in the dock of the Central Criminal Court, charged with obtaining money from bookmakers by means of forged betting telegrams. The husband was convicted. The wife was acquitted on the ground of that irrational presumption of marital coercion which still disfigures English criminal law. The learned judge traced this doctrine back to the Laws of Ine, No. 57 of which provides that if a husband steals a beast and carries it into his house, and it is seized therein, he shall forfeit his share of the household property, but that the wife is exempt because she must obey her lord. If the report of proceedings is accurate, the court did not refer to the best edition, nor even to the second best edition, of the Laws available down to the end of 1921. Mr. Attenborough's preface is dated February, 1922, and was presumably inaccessible at the date of the trial. If it had been, we know quite enough of the judge's learning and literary instinct to hope that he would have used it. We may also be permitted to hope that the next edition will include the laws of the later kings and such pieces as the ill-named *Quadripartitus* and *Leges Henrici Primi*. We have no Savigny-Stiftung to stimulate researches in English legal history, and the Record Commissioners of past generations spent public money not always wisely and often too well to make it likely that much assistance can be expected from official quarters at the present day. But if funds are lacking, the scholarship which could put them to good use is not to seek. Mr. Attenborough's book would satisfy any one on that point.

The index is good, but omits under "Burning" references to pages 51 and 71. Pollock and Maitland's second edition might have been used. At any rate, the page references to their *History of English Law* seem to indicate the first edition.

P. H. WINFIELD

DES CONTRATS PAR CORRESPONDANCE EN DROIT FRANÇAIS, EN DROIT ANGLAIS ET EN DROIT ANGLO-AMÉRICAIN. By Albert Cohen. Paris: Ernest Sagot et Cie. 1921. pp. xii, 197.

This small book contains a very thorough examination of the subject with which it deals. The author has carefully examined the English and American authorities and compared them with the French. Such a comparison is less helpful in regard to the formation of simple contracts than on many topics. The necessity of consideration for a contract profoundly affects any discussion of the topic in our law. Arguments which are possible if no such necessity exists are obviously fallacious in the common law. Moreover English and American law has gradually tended towards an objective theory of mutual assent, while the French law still conceives that it is an actual meeting of minds that constitutes a contract, and that outward acts are merely evidence of this mental assent. This point of view leads to the logical difficulty stated in *Adams v. Lindsell*, 1 B. & Ald. 681. Communication may go on *ad infinitum* without proving actual assent, for when the offeree accepts, *non constat* that the offerer still is of the same mind. His offer may be proof that he desired to contract when he mailed